

Pre-Employment Inquiry Guide

Introduction:

In accord with Section 206 of Public Act 453 of 1976, which is known as the Elliott-Larsen Civil Rights Act, an employer, labor organization, or employment agency shall not print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign relating to employment by the employer, or relating to membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by the employment agency, which indicates a preference, limitation, specification, or discrimination, based on religion, race, color, national origin, age, sex, height, weight, or marital status.

Except as permitted by rules promulgated by the Michigan Civil Rights Commission or by applicable federal law, an employer or employment agency shall not:

(a) Make or use a written or oral inquiry or form of application that elicits or attempts to elicit information concerning the religion, race, color, national origin, age, sex, height, weight, or marital status of a prospective employee.

(b) Make or keep a record of information described above in subdivision (a) or to disclose that information.

(c) Make or use a written or oral inquiry or form of application that expresses a preference, limitation, specification, or discrimination based on religion, race, color, national origin, age, sex, height, weight, or marital status of a prospective employee.

Section 206 of Public Act 220 of 1976, which is known as the Michigan Handicappers' Civil Rights Act, provides for similar protection for the handicapped if the specific handicap is unrelated to the individual's ability to perform the duties of a particular job or position. The Michigan Department of Civil Rights has developed a Pre-Employment Inquiry Guide to assist employers and employment agencies in complying with both Acts 220 and 453 in regard to pre-employment inquiries and securing certain data relating to job applicants. The Guide constitutes an interpretation of the Acts in this regard and is intended to aid in preventing practices which have a high potential for unlawful discrimination. Nothing in the guidelines or Acts prevents employers from hiring competent and reliable workers. The purpose of the Acts is not to interfere with an employer's right to hire qualified persons but to prevent those characteristics, which are not job-related, such as race, sex, marital status, et cetera, from influencing the selection process.

One of the most effective ways to ensure sound selection procedures and to avoid unlawful discrimination is for employers to carefully develop written, job-related position descriptions which outline the required skills and abilities for each position. Obviously, the purpose of a sound selection process is to obtain good employees who can meet specific work requirements and successfully perform the particular job duties. A person's race, sex, marital status, handicap, et cetera are not indicators of an individual's potential to be a good worker. Keeping in mind the specific job requirements and only the pertinent skills required to perform the particular job, employers may elicit adequate information on their employment applications which will aid in making a good selection. Employers can deprive themselves of valuable employees by stereotyping rather than judging applicants on an individual basis. In screening employment applicants, assumptions should not be made based on an applicant's identity or status. For example, it should not be assumed that because a woman has small children she will not be able to work odd hours. The issue is whether she can, in fact, work odd hours and not whether she has children. Therefore, the applicant should be asked directly whether she can work odd hours and not if she has children. It is essential that employers carefully examine the job-relatedness of all questions and develop different employment

applications from different job groups. For example, more detailed information is needed about an applicant for a highly technical computer position than a person seeking a job as a laborer.

The following question areas normally constitute the core of the application:

1. Identification of the applicant (name, address and telephone).
2. Applicant's interests (which jobs, salary levels).
3. Summary of the applicant's background (education and training, work history, special qualifications and skills).

This is essential information and questions designed to elicit such information are basic to an employment application form. Beyond this basic information, employers must design questions to elicit job-related information which will be applicable and useful in meeting their needs. Obviously, questions which elicit information that may have an adverse impact on classes protected by civil rights legislation should be avoided.

The attached Pre-Employment Inquiry Guide includes certain informational items that are considered unlawful pre-employment inquiries, but may be needed for payroll and fringe benefit purposes (marital status, number of dependents, et cetera). This information should not be requested on the employment application but can be lawfully secured subsequent to hiring. It should have no bearing in the selection process.

In accord with Section 206 of both Acts 220 and 453 and Michigan Civil Rights Commission Rules, employers may be granted approval by the Commission to collect data needed to carry out approved affirmative action plans. This constitutes the granting of exceptions to collecting data prohibited by Acts 220 and 453. Employers may apply to the Michigan Civil Rights Commission, 3054 West Grand Boulevard, Suite 3-600 Detroit, MI 48202, and include a copy of the affirmative action plan. Employees may also apply to the Commission for exemptions on the basis that religion, national origin, age, height, weight, or sex is a bona fide occupational qualification. However, there must be sufficient showing that an exemption is essential to the normal operation of the business based on business necessity.

The Pre-Employment Inquiry Guide can be used as an effective tool in minimizing the number of employment discrimination complaints, which benefits employers because of the financial savings of not having to defend such complaints. Employers who wish to have their employment applications reviewed may do so by forwarding a request and a copy of the application form to the Director of Enforcement, Michigan Department of Civil Rights, 3054 West Grand Boulevard, Suite 3-600 Detroit, MI 48202.

NOTE:

1. The Pre-Employment Inquiry Guide is based on the provisions of Public Acts 220 and 453 of 1976.* Employers who are subject to Public Act 453 may apply to the Michigan Civil Rights Commission for an exemption on the basis that religion, national origin, age, height, weight, or sex is a bonafide occupational qualification essential to the normal operation of the business or enterprise. Upon sufficient showing by the employer, the Commission may grant an exception. An employer may have a bonafide occupational qualification on the basis of religion, national origin, sex, or marital status, height and weight without obtaining prior exemption from the Commission, provided that an employer who does not obtain an exemption shall have the burden of establishing that the qualification is reasonably necessary or essential to the normal operation of the business. In the absence of business necessity, a selection criterion should not be used if it has a disproportionately burdensome effect, or disparate impact, upon those of a particular race, color, national origin, sex, age, marital status, religion height, weight, or the handicapped.

2. Exceptions to the list of unlawful questions are permitted by applicable federal law or by rules promulgated by the Michigan Civil Rights Commission, including rules relating to affirmative action plans if

approved by the Commission. Upon application to the Commission, employers may be permitted to make pre-employment inquiries prohibited by Public Acts 220 and 453 for purposes not inconsistent with the Constitution and Statutes.

3. It is unlawful to make or use a written or oral inquiry or form of application that elicits information concerning the handicap of a prospective employee for reasons contrary to the provisions or purposes of Act 220.

* This guide also reflects the requirements of Title VII of the U.S. Civil Rights Act of 1964, Title I of the Americans with Disabilities Act, and the Immigration Reform and Control Act of 1986.

(As part of the Department's Reasonable Accommodation Procedure, this pamphlet is available in alternative formats.)

Pre-Employment Inquiry Guide:

Subject	Lawful Pre-Employment Inquiries	Unlawful Pre-Employment Inquiries
Name:	Applicant's full name. Have you ever worked for this company under a different name? Is any additional information relative to a different name necessary to check work record? If yes, explain.	Original name of an applicant whose name has been changed by court order or otherwise. Applicant's maiden name.
Address Or Duration Of Residence:	How long a resident of this state or city?	
Birthplace:		Birthplace of applicant. Birthplace of applicant's parents, spouse or other close relatives. Requirement that applicant submit birth certificate, naturalization or baptismal record.
Age:	* Are you 18 years old or older? (*This question maybe asked only for the purpose of determining whether applicants are of legal age for employment.)	How old are you? What is your date of birth?
Religion Or Creed:		Inquiry into an applicant's religious denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
Race Or Color:		Complexion or color of skin.
Photograph:		Any requirement for a photograph prior to HIRE.
Height:		Inquiry regarding applicant's height.
Weight:		Inquiry regarding applicant's weight.

Marital Status:	Is your spouse employed by this employer?	Requirement that an applicant provide any information regarding marital status or children. Are you single or married? Do you have any children? Is your spouse employed? What is your spouse's name?
Sex:		Mr., Miss or Mrs. or an inquiry regarding sex. Inquiry as to the ability to reproduce or advocacy of any form of birth control. Requirement that women to given pelvic examinations.
Handicap / Disability:	Can you perform the essential duties of the job in which you wish to be employed, with or without accommodation?	Inquiries regarding an individual's physical or mental condition which are not directly related to the requirements of a specific job and which are used as a factor in making employment decisions in a way which is contrary to the provisions or purposes of the Michigan Handicappers' Civil Rights Act.
Citizenship:	<p>Are you a citizen of the United States?</p> <p>If not a citizen of the United States, does applicant intend to become a citizen of the United States?</p> <p>If you are not a United States citizen, have you the legal right to remain permanently in the United States? Do you intend to remain permanently in the United States?</p> <p>(To avoid discrimination based on national origin, the questions above should be asked after the individual has been hired, even if it is related to the Federal I-9 process.)</p>	<p>(Questions below are unlawful unless asked as part of the Federal I-9 process.)</p> <p>Of what country are you a citizen?</p> <p>Whether an applicant is naturalized or a native-born citizen; the date when the applicant acquired citizenship. Requirement that an applicant produce naturalization papers or first papers.</p> <p>Whether applicant's parents or spouse are naturalized or native born citizens of the United States; the date when such parent or spouse acquired citizenship.</p>

National Origin:	Inquiry into languages applicant speaks and writes fluently.	<p>Inquiry into applicant's (a) lineage; (b) ancestry; (c) national origin; (d) descent; (e) parentage, or nationality, unless pursuant to the Federal I-9 process.</p> <p>Nationality of applicant's parents or spouse.</p> <p>Inquiry into how applicant acquired ability to read, write or speak a foreign language.</p>
Education:	Inquiry into the academic, vocational or professional education of an applicant and the public and private schools attended.	
Experience:	<p>Inquiry into work experience.</p> <p>Inquiry into countries applicant has visited.</p>	
Arrests:	<p>Have you ever been convicted of a crime?</p> <p>Are there any felony charges pending against you?</p>	Inquiry regarding arrests which did not result in conviction. (Except for law enforcement agencies.)
Relatives:	Names of applicant's relatives already employed by this company.	Address of any relative of applicant, other than address (within the United States) of applicant's father and mother, husband or wife and minor dependent children.
Notice In Case Of Emergency:	Name and address of person to be notified in case of accident or emergency.	Name and address of nearest relative to be notified in case of accident or emergency.
Organizations:	Inquiry into the organizations of which an applicant is a member, excluding names or characters which indicate the race, color, religion, national origin or ancestry of its members.	List of all clubs, societies and lodges to which you belong.